BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
Martin Paul Ross, M.D.	)	**Case No. 800-2017-035435**
Physician's and Surgeon's Certificate No. G 88415	)	
Respondent	)	

DECISION

The attached Stipulated Surrender of License is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on October 9, 2017 **.**

IT IS SO ORDERED October 2, 2017 **.**

MEDICAL BOARD OF CALIFORNIA

By: Kimberly Kirchmeyer
Executive Director

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
State Bar No. 116564
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
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Attorneys for Complainant
Medical Board of California

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **MARTIN PAUL ROSS, M.D.** 511 2nd Avenue W Seattle, WA 98119 Physician's and Surgeon's Certificate No. G88415 Respondent.	Case No. 800-2017-035435 **STIPULATED SURRENDER OF LICENSE**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding, that the following matters are true:

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board.) This action has at all times been maintained solely in the official capacity of the Board's Executive Director, who is represented by Xavier Becerra, Attorney General of the State of California, by Jane Zack Simon, Supervising Deputy Attorney General.

2. Martin Paul Ross, M.D. (Respondent) enters into this Stipulated Surrender of License in consultation with his Washington legal counsel, Kenneth S. Kagan of the Law Office of Kenneth S. Kagan, PLLC, 600 First Avenue #512, Seattle, WA 98104.

3. Respondent has received, read, discussed with his Washington legal counsel, and understands the Accusation which is presently on file and pending in case number 800-2017-035435 (Accusation) a copy of which is attached as Exhibit A.

4. Respondent has carefully read, discussed with his Washington legal counsel and understands the charges and allegations in the Accusation. Respondent also has carefully read and understands the effects of this Stipulated Surrender of License (Stipulation.)

5. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

6. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

7. Respondent agrees that based on the action of the Washington Medical Quality Assurance Commission alleged in the Accusation, and not on any acts or conduct which occurred in California, cause exists to discipline his California physician's and surgeon's certificate pursuant to Business and Professions Code sections 141 and 2305. Respondent lives in Washington, has no intention of practicing in California, and wishes to surrender his California license at this time.

8. Pursuant to section 2224(b) of the Business and Professions Code, this Stipulation for Surrender of License shall be subject to the approval of the Board. Respondent understands and agrees that the Board's staff and counsel for Complainant may communicate directly with the Board regarding this Stipulation without notice to or participation by Respondent or his Washington legal counsel. By signing this Stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the Stipulation prior to the time the Board considers and acts upon it. In the event that this Stipulation is rejected for any reason by the

Board, it will be of no force or effect for either party. The Board will not be disqualified from further action in this matter by virtue of its consideration of this Stipulation.

9. Upon acceptance of this Stipulation by the Board, Respondent understands that he will no longer be permitted to practice as a physician and surgeon in California, and also agrees to surrender and cause to be delivered to the Board any license and wallet certificate in his possession before the effective date of the decision.

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

11. Respondent fully understands and agrees that if he ever files an application for relicensure or reinstatement in the State of California, the Board shall treat it as a petition for reinstatement, and Respondent must comply with all laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed.

12. Respondent understands that he may not petition for reinstatement as a physician and surgeon for a period of three (3) years from the effective date of his surrender. Information gathered in connection with Accusation number 800-2017-035453 may be considered by the Board in determining whether or not the grant the petition for reinstatement. For the purposes of the reinstatement hearing, the allegations contained in Accusation number 800-2017-035435 shall be deemed to be admitted by Respondent, and Respondent waives any and all defenses based on a claim of laches or the statute of limitations.

13. The parties understand and agree that facsimile or electronic copies of this Stipulated Surrender of License, including facsimile or electronic signatures thereto, shall have the same force and effect as the originals.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License. I enter into it freely and voluntarily and with full knowledge of its force and effect do hereby surrender my Physician's and Surgeon's Certificate Number G88415 to the Medical Board of California, for its formal

acceptance. By signing this stipulation to surrender my license, I recognize that upon its formal acceptance by the Board, I will lose all rights and privileges to practice as a physician and surgeon in the State of California and I also will cause to be delivered to the Board any license and wallet certificate in my possession before the effective date of the decision.

DATED: 9/22/17

MARTIN PAUL ROSS, M.D.
Respondent

I have read and fully discussed with Respondent Martin Paul Ross, M.D. the terms and conditions and other matters contained in the above Stipulated Surrender of License. I approve its form and content.

DATED: 9/22/17

KENNETH S. KAGAN
Law Office of Kenneth S. Kagan, PLLC
Washington Legal Counsel for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License is hereby respectfully submitted for consideration by the Medical Board of California.

DATED: 9/22/17

XAVIER BECERRA
Attorney General of the State of California

JANE ZACK SIMON
Supervising Deputy Attorney General

Attorneys for Complainant

EXHIBIT A

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
State Bar No. 116564
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
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Facsimile: (415) 703-5480
E-mail: Janezack.simon@doj.ca.gov

Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **MARTIN PAUL ROSS, M.D.** 511 2nd Avenue W Seattle, WA 98119 Physician's and Surgeon's Certificate No. G88415, Respondent.	Case No. 800-2017-035435 **A C C U S A T I O N**

The Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California, Department of Consumer Affairs, and brings this Accusation solely in her official capacity.

2. On December 17, 2008, Physician's and Surgeon's Certificate No. G88415 was issued by the Medical Board of California to Martin Paul Ross, M.D. (Respondent.) The certificate is delinquent, having expired on May 31, 2016.

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JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board) under the authority of the following sections of the California Business and Professions Code (Code) and/or other relevant statutory enactment:

A. Section 2227 of the Code provides in part that the Board may revoke, suspend for a period not to exceed one year, or place on probation, the license of any licensee who has been found guilty under the Medical Practice Act, and may recover the costs of probation monitoring.

B. Section 2305 of the Code provides, in part, that the revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California under the Medical Practice Act, constitutes grounds for discipline for unprofessional conduct.

C. Section 141 of the Code provides:

> "(a) For any licensee holding a license issued by a board under the jurisdiction of a department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or by another country shall be conclusive evidence of the events related therein.
>
> "(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by the board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country."

FIRST CAUSE FOR DISCIPLINE

(Discipline, Restriction, or Limitation Imposed by Another State)

4. On June 29, 2017, the Washington Medical Quality Assurance Commission (Washington Commission) issued a Stipulation to Informal Disposition regarding Respondent's

license to practice medicine in the State of Washington. The Stipulation to Informal Disposition resolved allegations that Respondent departed from the standard of care in his treatment of a patient in 2014-2015. The allegations included that Respondent prescribed excessive doses of the controlled substance Ambien for unapproved and unestablished indications, failed to obtain prior medical records or to properly refer the patient for proper evaluation, inappropriately prescribed Gabitril in combination with Ambien, and inappropriately prescribed thyroid medication. It was also alleged that Respondent failed to properly document his care and treatment of the patient. Under the terms of the Stipulation to Informal Disposition, Respondent was required to complete continuing education in medical recordkeeping and documentation, develop and implement a protocol for documenting prescription activity, write scholarly papers regarding the use of Ambien for pain management and headaches and the proper diagnosis and treatment of hypothyroidism. He was also required to provide the patient with referrals for a comprehensive psychiatric evaluation and comprehensive pain evaluation. He was required to personally appear before the Washington Commission and to pay cost recovery. Copies of the Stipulation to Informal Disposition and the Statement of Charges issued by the Washington Commission are attached as Exhibit A.

5. Respondent's conduct and the action of the Washington Medical Quality Assurance Commission as set forth in paragraph 4, above, constitute cause for discipline pursuant to sections 2305 and/or 141 of the Code.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G88415 issued to respondent Martin Paul Ross, M.D.;

2. Revoking, suspending or denying approval of Respondent's authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent, if placed on probation, to pay the costs of probation

monitoring; and

4. Taking such other and further action as the Board deems necessary and proper.

DATED: September 12, 2017

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION

In the Matter of the License to Practice as a Physician and Surgeon of: **MARTIN P. ROSS, MD** License No. MD00033296 Respondent.	**No. M2016-867** **STATEMENT OF ALLEGATIONS AND SUMMARY OF EVIDENCE**

The Executive Director of the Medical Quality Assurance Commission (Commission), on designation by the Commission, makes the allegations below, which are supported by evidence contained in Commission file number 2016-3072. The patient referred to in this Statement of Allegations and Summary of Evidence is identified in the attached Confidential Schedule.

1. ALLEGATIONS

1.1 On November 7, 1995, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent's license is currently active. Respondent is board certified in family medicine.

1.2 Patient A suffers from debilitating headaches, severe fatigue, insomnia, sensitivity to sound and light, and severe pain spikes throughout her body. Her diagnoses include Lyme disease, Toxic Environmental Mold Exposure, and Hypothyroidism. Patient A sought out Respondent for his experience treating chronic fatigue and tick-borne illnesses.

1.3 On October 6, 2014, Patient A had an initial consultation with Respondent via online video conferencing. It was determined that Patient A had been taking 50mg of Ambien each day to alleviate her pain.

1.4 On November 6, 2014, Patient A came in to Respondent's clinic for an in-person evaluation. During that visit, Respondent prescribed Ambien 10mg and instructed Patient A to take ½ to 6 tablets three (3) times a day as needed, which allowed for as much as 180 mg daily. Respondent continued to prescribe Ambien 10mg in increasing quantities each month for the following two (2) years.

1.5 A March 7, 2016 Prescription Monitoring Program (PMP) report revealed that Patient A received 2,280 pills of Ambien from five different pharmacies since March 7, 2015. All were prescribed by Respondent.

1.6 Respondent's care of Patient A fell below the standard of care in the following respects:

1.6.1 Respondent prescribed excessive doses of Ambien[1] for unapproved and unestablished indications.

1.6.2 Respondent failed to document informed consent discussion with Patient A regarding off-label use of Ambien in excessively high doses.

1.6.3 Respondent failed to document rationale for continuing to prescribe Ambien in the same or higher doses Patient A was already taking.

1.6.4 Respondent failed to obtain Patient A's prior psychiatric records to verify that: (1) a thorough evaluation had been done, and (2) it revealed no significant psychiatric disorder(s) causing or contributing to Patient A's headaches and pain.

1.6.5 In the absence of Patient A's psychiatric record, Respondent failed to refer Patient A for a psychiatric evaluation to assess for any disorder(s) causing or contributing to Patient A's headaches and pain, and failed to refer Patient A to a pain management specialist or pain clinic.

1.6.6 Respondent failed to document, for the majority of Patient A's office visits, the actual doses of Ambien Patient A was instructed to take.

1.6.7 Respondent failed to document any periodic assessments of Patient A's condition in response to excessively high doses of Ambien and its known adverse effects.

1.6.8 Respondent failed to document when increases in the daily dose of Ambien was allowed or directed, and failed to document a rationale for such increases.

1.6.9 Respondent prescribed Gabitril in combination with Ambien. Gabitril and Ambien both have the potential side effect of suicidal ideation, and

[1]Ambien is a schedule IV controlled substance which, if taken in high doses, can cause addiction, behavior changes, and suicidal ideation.

prescribing these medications in combination increases the potential for the patient experiencing this side effect.

1.6.10 Respondent prescribed thyroid medication to Patient A despite Patient A's thyroid and TSH levels being within the normal range.

1.6.11 Respondent failed to document any consideration of drug-to-drug interaction.

1.6.12 Respondent admits he did not always remove inactive medications from Patient A's medical record or document that certain medications were inactive.

2. SUMMARY OF EVIDENCE

2.1 Complaint dated March 8, 2016.

2.2 Letter from Patient A dated April 25, 2016.

2.3 Letter from Patient A dated April 28, 2016.

2.4 Respondent's written statement on behalf of his Attorney, Kenneth Kagan, dated May 18, 2016.

2.5 Patient A's medical records.

2.6 Washington state Prescription Monitoring Program report detailing medications received by Patient A.

3. ALLEGED VIOLATIONS

3.1 The facts alleged in Section 1, if proven, would constitute unprofessional conduct in violation of RCW 18.130.180(4) and WAC 246-919-853 through -857 which provide in part:

> **RCW 18.130.180 Unprofessional conduct.** The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:
>
> ...
>
> (4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed
>
> ...

WAC 246-919-853
Patient evaluation.

The physician shall obtain, evaluate, and document the patient's health history and physical examination in the health record prior to treating for chronic noncancer pain.
(1) The patient's health history shall include:
(a) Current and past treatments for pain;
(b) Comorbidities; and
(c) Any substance abuse.
(2) The patient's health history should include:
(a) A review of any available prescription monitoring program or emergency department-based information exchange; and
(b) Any relevant information from a pharmacist provided to a physician.
(3) The initial patient evaluation shall include:
(a) Physical examination;
(b) The nature and intensity of the pain;
(c) The effect of the pain on physical and psychological function;
(d) Medications including indication(s), date, type, dosage, and quantity prescribed;
(e) A risk screening of the patient for potential comorbidities and risk factors using an appropriate screening tool. The screening should address:
(i) History of addiction;
(ii) Abuse or aberrant behavior regarding opioid use;
(iii) Psychiatric conditions;
(iv) Regular concomitant use of benzodiazepines, alcohol, or other central nervous system medications;
(v) Poorly controlled depression or anxiety;
(vi) Evidence or risk of significant adverse events, including falls or fractures;
(vii) Receipt of opioids from more than one prescribing practitioner or practitioner group;
(viii) Repeated visits to emergency departments seeking opioids;
(ix) History of sleep apnea or other respiratory risk factors;
(x) Possible or current pregnancy; and
(xi) History of allergies or intolerances.
(4) The initial patient evaluation should include:
(a) Any available diagnostic, therapeutic, and laboratory results; and
(b) Any available consultations.
(5) The health record shall be maintained in an accessible manner, readily available for review, and should include:
(a) The diagnosis, treatment plan, and objectives;
(b) Documentation of the presence of one or more recognized indications for the use of pain medication;
(c) Documentation of any medication prescribed;
(d) Results of periodic reviews;
(e) Any written agreements for treatment between the patient and the physician; and
(f) The physician's instructions to the patient.

WAC 246-919-854
Treatment plan.

(1) The written treatment plan shall state the objectives that will be used to determine treatment success and shall include, at a minimum:
(a) Any change in pain relief;
(b) Any change in physical and psychosocial function; and
(c) Additional diagnostic evaluations or other planned treatments.
(2) After treatment begins the physician should adjust drug therapy to the individual health needs of the patient. The physician shall include indications for medication use on the prescription and require photo identification of the person picking up the prescription in order to fill. The physician shall advise the patient that it is the patient's responsibility to safeguard all medications and keep them in a secure location.
(3) Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

WAC 246-919-855
Informed consent.

The physician shall discuss the risks and benefits of treatment options with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is without health care decision-making capacity.

WAC 246-919-856
Written agreement for treatment.

Chronic noncancer pain patients should receive all chronic pain management prescriptions from one physician and one pharmacy whenever possible. If the patient is at high risk for medication abuse, or has a history of substance abuse, or psychiatric comorbidities, the prescribing physician shall use a written agreement for treatment with the patient outlining patient responsibilities. This written agreement for treatment shall include:
(1) The patient's agreement to provide biological samples for urine/serum medical level screening when requested by the physician;
(2) The patient's agreement to take medications at the dose and frequency prescribed with a specific protocol for lost prescriptions and early refills;
(3) Reasons for which drug therapy may be discontinued (e.g., violation of agreement);
(4) The requirement that all chronic pain management prescriptions are provided by a single prescriber or multidisciplinary pain clinic and dispensed by a single pharmacy or pharmacy system;
(5) The patient's agreement to not abuse alcohol or use other medically unauthorized substances;
(6) A written authorization for:
(a) The physician to release the agreement for treatment to local emergency departments, urgent care facilities, and pharmacies; and

(b) Other practitioners to report violations of the agreement back to the physician;
(7) A written authorization that the physician may notify the proper authorities if he or she has reason to believe the patient has engaged in illegal activity;
(8) Acknowledgment that a violation of the agreement may result in a tapering or discontinuation of the prescription;
(9) Acknowledgment that it is the patient's responsibility to safeguard all medications and keep them in a secure location; and
(10) Acknowledgment that if the patient violates the terms of the agreement, the violation and the physician's response to the violation will be documented, as well as the rationale for changes in the treatment plan.

WAC 246-919-857
Periodic review.

The physician shall periodically review the course of treatment for chronic noncancer pain, the patient's state of health, and any new information about the etiology of the pain. Generally, periodic reviews shall take place at least every six months. However, for treatment of stable patients with chronic noncancer pain involving nonescalating daily dosages of forty milligrams of a morphine equivalent dose (MED) or less, periodic reviews shall take place at least annually.
(1) During the periodic review, the physician shall determine:
(a) Patient's compliance with any medication treatment plan;
(b) If pain, function, or quality of life have improved or diminished using objective evidence, considering any available information from family members or other caregivers; and
(c) If continuation or modification of medications for pain management treatment is necessary based on the physician's evaluation of progress towards treatment objectives.
(2) The physician shall assess the appropriateness of continued use of the current treatment plan if the patient's progress or compliance with current treatment plan is unsatisfactory. The physician shall consider tapering, changing, or discontinuing treatment when:
(a) Function or pain does not improve after a trial period;
(b) There is evidence of significant adverse effects;
(c) Other treatment modalities are indicated; or
(d) There is evidence of misuse, addiction, or diversion.

(3) The physician should periodically review information from any available prescription monitoring program or emergency department-based information exchange.
(4) The physician should periodically review any relevant information from a pharmacist provided to the physician.

4. NOTICE TO RESPONDENT

4.1 The Commission has determined that this case may be appropriate for resolution through a Stipulation to Informal Disposition pursuant to RCW 18.130.172(2). A proposed Stipulation to Informal Disposition is attached, which contains the disposition the Commission believes is necessary to address the conduct alleged in this Statement of Allegations and Summary of Evidence.

4.2 If Respondent agrees that the disposition imposed by the Stipulation to Informal Disposition is appropriate, Respondent should sign and date the Stipulation to Informal Disposition and return it within fourteen (14) days to the Medical Quality Assurance Commission at P.O. Box 47866, Olympia, Washington 98504-7866.

4.3 If Respondent does not agree that the terms and conditions contained in the Stipulation to Informal Disposition are appropriate, Respondent should contact Anna Clavel, Staff Attorney for the Medical Quality Assurance Commission, P.O. Box 47866, Olympia, Washington 98504-7866, (360) 236-2787 within fourteen (14) days.

4.4 If Respondent does not respond within fourteen (14) days, the Commission will assume Respondent has declined to resolve the allegations by means of a Stipulation to Informal Disposition.

4.5 If Respondent declines to resolve the allegations by means of a Stipulation to Informal Disposition pursuant to RCW 18.130.172(2), the Commission may proceed to formal disciplinary action against Respondent by filing a Statement of Charges, pursuant to RCW 18.130.172(3).

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4.6 The cover letter enclosed with this Statement of Allegations and Summary of Evidence was mailed to the name and address currently on file for Respondent's license. Respondent must notify, in writing, the Commission if Respondent's name and/or address changes.

DATED: February 13, 2017.

STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION

Melanie de Leon

MELANIE DE LEON
EXECUTIVE DIRECTOR

ANNA CLAVEL, WSBA NO. 46229
COMMISSION STAFF ATTORNEY

I declare that this is a true and accurate copy of the original on file with the Washington State Department of Health, Medical Quality Assurance Commission

Michael J. Kramer

8-9-17

Date

STATE OF WASHINGTON OFFICIAL SEAL DEPARTMENT OF HEALTH

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CONFIDENTIAL SCHEDULE

This information is confidential and is NOT to be released without the consent of the individual or individuals named herein. RCW 42.56.240(1)

Patient A [redacted]

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STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION

In the Matter of the License to Practice as a Physician and Surgeon of: **MARTIN P. ROSS, MD** License No. MD00033296 Respondent.	**No. M2016-867** **STIPULATION TO INFORMAL DISPOSITION**

The Medical Quality Assurance Commission (Commission) issued a Statement of Allegations and Summary of Evidence (Statement of Allegations) alleging the conduct described below pursuant to the Uniform Disciplinary Act, Chapter 18.130 RCW, and evidence contained in case file number 2016-3072. Respondent does not admit any of the allegations. This Stipulation to Informal Disposition (Stipulation) is not formal disciplinary action and shall not be construed as a finding of unprofessional conduct or inability to practice.

1. ALLEGATIONS

1.1 On November 7, 1995, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent's license is currently active. Respondent is board certified in family medicine.

1.2 Patient A suffers from debilitating headaches, severe fatigue, insomnia, sensitivity to sound and light, and severe pain spikes throughout her body. Her diagnoses include Lyme disease, Toxic Environmental Mold Exposure, and Hypothyroidism. Patient A sought out Respondent for his experience treating chronic fatigue and tick-borne illnesses.

1.3 On October 6, 2014, Patient A had an initial consultation with Respondent via online video conferencing. It was determined that Patient A had been taking 50mg of Ambien each day to alleviate her pain.

1.4 On November 6, 2014, Patient A came in to Respondent's clinic for an in-person evaluation. During that visit, Respondent prescribed Ambien 10mg and instructed Patient A to take ½ to 6 tablets three (3) times a day as needed, which

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allowed for as much as 180 mg daily. Respondent continued to prescribe Ambien 10mg in increasing quantities each month for the following two (2) years.

1.5 A March 7, 2016 Prescription Monitoring Program (PMP) report revealed that Patient A received 2,280 pills of Ambien from five different pharmacies since March 7, 2015. All were prescribed by Respondent.

1.6 Respondent's care of Patient A fell below the standard of care in the following respects:

1.6.1 Respondent prescribed excessive doses of Ambien[1] for unapproved and unestablished indications.

1.6.2 Respondent failed to document informed consent discussion with Patient A regarding off-label use of Ambien in excessively high doses.

1.6.3 Respondent failed to document rationale for continuing to prescribe Ambien in the same or higher doses Patient A was already taking.

1.6.4 Respondent failed to obtain Patient A's prior psychiatric records to verify that: (1) a thorough evaluation had been done, and (2) it revealed no significant psychiatric disorder(s) causing or contributing to Patient A's headaches and pain.

1.6.5 In the absence of Patient A's psychiatric record, Respondent failed to refer Patient A for a psychiatric evaluation to assess for any disorder(s) causing or contributing to Patient A's headaches and pain, and failed to refer Patient A to a pain management specialist or pain clinic.

1.6.6 Respondent failed to document, for the majority of Patient A's office visits, the actual doses of Ambien Patient A was instructed to take.

1.6.7 Respondent failed to document any periodic assessments of Patient A's condition in response to excessively high doses of Ambien and its known adverse effects.

1.6.8 Respondent failed to document when increases in the daily dose of Ambien was allowed or directed, and failed to document a rationale for such increases.

[1]Ambien is a schedule IV controlled substance which, if taken in high doses, can cause addiction, behavior changes, and suicidal ideation.

1.6.9 Respondent prescribed Gabitril in combination with Ambien. Gabitril and Ambien both have the potential side effect of suicidal ideation, and prescribing these medications in combination increases the potential for the patient experiencing this side effect.

1.6.10 Respondent prescribed thyroid medication to Patient A despite Patient A's thyroid and TSH levels being within the normal range.

1.6.11 Respondent failed to document any consideration of drug-to-drug interaction.

1.6.12 Respondent admits he did not always remove inactive medications from Patient A's medical record or document that certain medications were inactive.

2. STIPULATION

2.1 The Commission alleges that the conduct described above, if proven, would constitute a violation of RCW 18.130.180(4) and WAC 246-919-853 through -857.

2.2 The parties wish to resolve this matter by means of a Stipulation pursuant to RCW 18.130.172(1).

2.3 Respondent agrees to be bound by the terms and conditions of this Stipulation.

2.4 This Stipulation is of no force and effect and is not binding on the parties unless and until it is accepted by the Commission.

2.5 If the Commission accepts the Stipulation it will be reported to the National Practitioner Data Bank (45 CFR Part 60), the Federation of State Medical Boards' Physician Data Center, and elsewhere as required by law.

2.6 The Statement of Allegations and this Stipulation are public documents. They will be placed on the Department of Health website, disseminated via the Commission's electronic mailing list, and disseminated according to the Uniform Disciplinary Act (Chapter 18.130 RCW). They are subject to disclosure under the Public Records Act, Chapter 42.56 RCW; and shall remain part of Respondent's file according to the state's records retention law and cannot be expunged.

2.7 The Commission agrees to forego further disciplinary proceedings concerning the allegations.

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2.8 Respondent agrees to successfully complete the terms and conditions of this Stipulation.

2.9 A violation of the provisions of Section 3 of this Stipulation, if proved, would constitute grounds for discipline under RCW 18.130.180 and the imposition of sanctions under RCW 18.130.160.

3. INFORMAL DISPOSITION

The Commission and Respondent stipulate to the following terms:

3.1 **Compliance Orientation.** Respondent shall complete a compliance orientation in person or by telephone within **two (2) months** of the effective date of this Stipulation. Within **ten (10) days** of the effective date of this Stipulation, Respondent must contact the Compliance Unit at the Commission by calling 360-236-2763, or by sending an email to: Medical.Compliance@doh.wa.gov. Respondent must provide a contact phone number where Respondent can be reached for scheduling purposes.

3.2 **Continuing Medical Education.** Within **six (6) months** of the effective date of this Stipulation, Respondent will successfully complete an in-person continuing medical education (CME) course on medical recordkeeping and documentation. This course shall be in addition to mandatory continuing education hours required for license renewal. Respondent will obtain Commission approval in advance and will provide the Commission with proof of completion within **thirty (30) days** of such completion. Submissions for advance course approval and proof of completion will be sent to:

Compliance Officer
Medical Quality Assurance Commission
P.O. Box 47866
Olympia, Washington 98504-7866

The following courses are pre-approved:

Professional Boundaries, Inc.
The PBI Medical Record Keeping Course
https://professionalboundaries.com/medical-record-keeping-courses.php

The Center for Personalized Education
Medical Record Keeping Seminar
http://www.cpepdoc.org/courses/category/medical-record-keeping/

Case Western Reserve University Continuing Medical Education Program
Medical Documentation: Clinical, Legal and Economic Implications...

http://case.edu/medicine/cme/courses-activities/intensive-course-series/medical-documentation/

3.3 **Develop and Implement Protocol.** Within **two (2) months** of completing the above coursework, Respondent will develop and implement a protocol for documenting prescription activity, specifically those involving off-label uses of medication and prescription of doses that exceed the usual dose range. Respondent should be prepared to discuss this protocol at his initial personal appearance. The written protocol must be submitted to the Commission prior to the personal appearance, in both electronic and printed format, to the respective addresses below:

1. Medical.compliance@doh.wa.gov
2. Compliance Officer
   Medical Quality Assurance Commission
   P.O. Box 47866
   Olympia, Washington 98504-7866

3.4 **Paper on Ambien.** Within **three (3) months** of the effective date of this Stipulation, Respondent will conduct a literature search and write a scholarly paper of no less than one thousand (1,000) words, with annotated bibliography, regarding the use of Ambien for pain management and headaches, including appropriate use, if any, and inappropriate use. Respondent will describe what constitutes a credible scientific source, versus a non-scientific source, or anecdotal information. Respondent will discuss this paper with the Commission at his initial personal appearance. The paper must be submitted to the Commission, in both electronic and printed format, to the addresses in section 3.3.

3.5 **Paper on Hypothyroidism.** Within **three (3) months** of the effective date of this Stipulation, Respondent will submit a scholarly research paper of no less than one thousand (1,000) words, with annotated bibliography, on the proper diagnosis and treatment of hypothyroidism. Respondent will discuss this paper and how he changed his practice at his initial personal appearance. The paper must be submitted to the Commission, in both electronic and printed format, to the addresses in section 3.3.

3.6 **Referral for Psychiatric Evaluation.** Within **thirty (30) days** of the effective date of this Stipulation, Respondent must provide Patient A with a referral for a comprehensive psychiatric evaluation. A copy of the referral must be mailed to the Commission at the address in section 3.2 within **ten (10) days** of making the referral.

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3.7 **Referral to Pain Specialist/Clinic.** Within **thirty (30) days** of the effective date of this Stipulation, Respondent must provide Patient A with a referral to a pain specialist or pain clinic for a comprehensive pain evaluation. A copy of the referral must be mailed to the Commission at the address in section 3.2 within **ten (10) days** of making the referral.

3.8 **Personal Appearances.** Respondent must personally appear before the Commission approximately **nine (9) months** after the effective date of this Stipulation, or as soon thereafter as the Commission's schedule permits. Respondent must participate in a brief telephone call with the Commission's Compliance Unit prior to his appearance. The purpose of appearances is to provide meaningful oversight of Respondent's compliance with the requirements of this Stipulation. The Commission will provide reasonable notice of all scheduled appearances. The Commission may require, or waive the need for, further appearances.

3.9 **Cost Recovery.** Respondent agrees to reimburse costs to the Commission in the amount of one thousand dollars ($1,000), which must be received by the Commission within **six (6) months** of the effective date of this Stipulation. The reimbursement shall be paid by certified or cashier's check or money order, made payable to the Department of Health and mailed to:

Department of Health
Medical Quality Assurance Commission
P.O. Box 1099
Olympia, Washington 98507-1099

3.10 **Obey Laws.** Respondent must obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington.

3.11 **Costs.** Respondent assumes all costs of complying with this Stipulation.

3.12 **Violations.** If Respondent violates any provision of this Stipulation in any respect, the Commission may initiate further action against Respondent's license.

3.13 **Change of Address.** Respondent must inform the Commission and the Adjudicative Clerk Office in writing, of changes in his residential and/or business address within thirty (30) days of such change.

3.14 **Effective Date.** The effective date of this Stipulation is the date the Adjudicative Clerk Office places the signed Stipulation into the U.S. mail. If required,

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Respondent shall not submit any fees or compliance documents until after the effective date of this Stipulation.

3.15 **Termination of Stipulation**. Respondent may petition the Commission in writing to terminate this Stipulation no sooner than **one (1) year** from the effective date and only after satisfying all the terms of this Stipulation. The Commission will issue a notice scheduling a date and time for Respondent to appear, unless the Commission waives the need for an appearance.

4. COMPLIANCE WITH SANCTION RULES

4.1 The Commission applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions. Tier A of the "Practice Below Standard of Care" schedule, WAC 246-16-810, applies to cases where substandard practices caused no or minimal patient harm or a risk of minimal patient harm. Respondent placed Patient A at a risk of harm when he prescribed high doses of Ambien in combination with other drugs and did not periodically examine Patient A or appropriately document care.

4.2 Tier A requires the imposition of sanctions ranging from zero years of oversight to three years of oversight, unless revocation. Under WAC 246-16-800(3)(d), the starting point for the duration of the sanctions is the middle of the range. The Commission uses aggravating and mitigating factors to move towards the maximum or minimum ends of the range.

4.3 The aggravating and mitigating factors in this case, listed below, justify moving toward the minimum end of the range. The sanctions in this case include a CME, protocol, a paper on hypothyroidism, a paper on Ambien, patient referrals to specialists, cost recovery, and other terms designed to protect the public. These sanctions are appropriate within the Tier A range given the facts of the case and the following aggravating and mitigating factors:

Mitigating:

- Respondent has been in practice for twenty one (21) years without previous discipline;
- Respondent has cooperated with the Commission's investigation.

Aggravating:

- The Commission did not identify any aggravating factors.

5. RESPONDENT'S ACCEPTANCE

I, MARTIN P. ROSS, MD, Respondent, certify that I have read this Stipulation in its entirety; that my counsel of record, KENNETH KAGAN, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Commission without my appearance. If the Commission accepts the Stipulation, I understand that I will receive a signed copy.

MARTIN P. ROSS, MD
RESPONDENT

5/23/17
DATE

KENNETH KAGAN, WSBA NO. 12983
ATTORNEY FOR RESPONDENT

5/24/17
DATE

6. COMMISSION'S ACCEPTANCE

The Commission accepts this Stipulation. All parties shall be bound by its terms and conditions.

DATED: June 29, 2017.

STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION

PANEL CHAIR

PRESENTED BY:

ANNA G. CLAVEL, WSBA NO. 46229
COMMISSION STAFF ATTORNEY

I declare that this is a true and accurate copy of the original on file with the Washington State Department of Health, Medical Quality Assurance Commission
Michael J. Kramer
6-9-17
Date

STATE OF WASHINGTON OFFICIAL SEAL DEPARTMENT OF HEALTH

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